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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL PRYOR; JAMES FENSKE;
ROBERT KLINE; JAMES BITTLE; ROY
WHITED; DON HICKS; DAVID BURDEN,
ROBERT STANLEY; RANDALL HUGGINS;
and ROGER WARREN, on Behalf of
Themselves and All Others Similarly Situated,

Petitioners,

v.

OVERSEAS ADMINISTRATIVE
SERVICES, LTD.; SERVICE EMPLOYEES
INTERNATIONAL, INC.; KBR TECHNICAL
SERVICES, INC.; KELLOGG BROWN &
ROOT SERVICES, INC.; KBR, INC.;
HALLIBURTON, INC.; KBR HOLDINGS,
LLC; KELLOGG BROWN & ROOT LLC;
KELLOGG BROWN & ROOT
INTERNATIONAL, INC.; KELLOGG
BROWN & ROOT, INC.; DII INDUSTRIES,
LLC; and DOES 1 through 1000,

Respondents.

Case No. 3:10-cv-01930-BZ

**ADMINISTRATIVE MOTION FOR AN
EXPEDITED HEARING; ~~PROPOSED~~
ORDER THEREON**

**[Proposed Hearing Date for Motion to
Compel Arbitration in the Manner
Ordered by the Arbitrator: May 19,
2010]**

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Administrative Motion for an Expedited Hearing

Pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 4, Petitioners move this Court for an order granting this Administrative Motion for an Expedited Hearing. In support of their motion, Petitioners state the following:

1. Petitioners have noticed their accompanying Motion to Compel Arbitration in the Manner Ordered by the Arbitrator for May 19, 2010 (“Motion to Compel”), at 10:00 a.m. before Magistrate Judge Zimmerman. This Motion to Compel seeks an order that KBR return immediately to an arbitration that has been underway for more than two and a half years, as provided for in the parties’ employment agreements and as ordered by the Arbitrator.

2. Petitioners filed their original Petition for Order Compelling Arbitration in the Manner Ordered by the Arbitrator on May 4, 2010 (“Petition to Compel”), and filed their Amended Petition for Order Compelling Arbitration in the Manner Ordered by the Arbitrator (“Amended Petition to Compel”) and their Motion to Compel today, May 12, 2010.

3. Petitioners served their Petition to Compel, their Amended Petition to Compel, and their Motion to Compel in the manner provided by the Federal Rules of Civil Procedure and the applicable arbitration agreements by delivering copies of these documents by hand to Respondents’ counsel today, May 12, 2010. *See* Proof of Service, filed herewith; *see also* Exhibit 2 attached to Petition to Compel, Dkt. 3-1, at p. 25 of 74. Copies of these documents were also mailed to Respondents’ Texas counsel and to Respondents’ Dispute Resolution Program Administrator. *See* Proof of Service.

4. Section 4 of the FAA provides, in pertinent part, as follows:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. *Five days’ notice in writing of such application shall be served upon the party in default.* Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall

1 hear the parties, and upon being satisfied that the making of the agreement for
2 arbitration or the failure to comply therewith is not in issue, the court shall make an
3 order directing the parties to proceed to arbitration in accordance with the terms of
the agreement.

4 9 U.S.C. § 4 (emphasis added).

5 5. As set forth above, Section 4 of the FAA, 9 U.S.C. § 4, provides for the Court to
6 hear the parties five days after filing a petition to compel arbitration. *See, e.g., Unionmutual Stock*
7 *Life Ins. Co. of America v. Beneficial Life Ins. Co.*, 774 F.2d 524 (1st Cir. 1985) (holding that “a
8 hearing on the order compelling arbitration could be held by the district court any time” five days
9 after the application was made); *Roque v. Applied Materials, Inc.*, No. CV 03-1564-ST, 2004 WL
10 1212110, at *4 (D. Or. Feb. 20, 2004) (holding that § 4 of the FAA “requires the party opposing
11 arbitration to be given five days’ notice before a hearing is held regarding the application for
12 arbitration”).


13 6. As the applicable statute provides that the time for a court determination following
14 filing of a petition to compel is to be five days, the local rule that motions are generally to be set for
15 35 days after a motion is filed do not apply. Because Petitioners have a statutory right to a hearing
16 on five days’ notice, Petitioners have not sought a stipulation from Respondents with respect to the
17 timing of the hearing on this Motion to Compel.

18 7. Section 4’s provision “for an expeditious and summary hearing” is consistent with
19 the policy underlying the FAA “to move the parties to an arbitrable dispute out of court and into
20 arbitration as quickly and easily as possible.” *See Moses H. Cone Memorial Hosp. v. Mercury*
21 *Const. Corp.*, 460 U.S. 1, 22 (1983); *see also Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388
22 U.S. 395, 404 (1967) (explaining “the unmistakably clear congressional purpose that the arbitration
23 procedure, when selected by the parties to a contract, be speedy and not subject to delay and
24 obstruction in the courts); *Sanford v. Memberworks, Inc.*, 483 F.3d 956, 960-61 (9th Cir. 2007)
25 (quoting *Moses H. Cone*, 460 U.S. at 22, as quoted in *Bushley v. Credit Suisse First Boston*, 360
26 F.3d 1149, 1153 (9th Cir. 2004)).

~~[PROPOSED]~~ ORDER

No opposition having been received to the Administrative Motion for an Expedited Hearing, Pursuant to section 4 of the Federal Arbitration Act, 9 U.S.C. § 4, the Court will hear Petitioners' Motion to Compel Arbitration in the Manner Ordered by the Arbitrator as noticed by Petitioners for May 19, 2010 ("Motion to Compel"), at 10:00 a.m. At the hearing the Court will consider scheduling such further briefing and argument as necessary. Prior to the hearing the parties IT IS SO ORDERED. shall consent to or decline magistrate judge jurisdiction. The form to do so may be found at: <http://www.cand.uscourts.gov>.

DATED: May 18, 2010


The Honorable Bernard Zimmerman
UNITED STATES MAGISTRATE JUDGE